

REMARKS

Claims 33-36, 38-41, 49 and 50 are pending (new claim 50 being added by this amendment).

In the aforesaid Office Action, the Examiner rejected claims 33-36, 38, 41 and 49 under 35 U.S.C. 103(a) as being unpatentable over Davis-Lemessy et al. (U.S. 6,139,525) and claims 39 and 40 as being unpatentable over Davis-Lemessy et al. in view of Okuda et al. (6,053,939), stating, in part, in the Response to Arguments section, that Applicant's arguments (Applicants having submitted that the fragmented acrylate is a structure that imparts a distinctive structural characteristic to the final product resulting from the plasma polymerization) are not persuasive as the Specification at page 10 specifically states that the final product is a crosslinked thin film, and hence is the same as that taught in the prior art, and that it is unclear how the fragmented acrylate results in a distinctive structure given that the end product is the same.

However, the Examiner's attention is directed to paragraph [0022] disclosing that "[o]ne of skill in the art will recognize that some fragmentation of the acrylate typically occurs during plasma polymerization, resulting in an acrylate-like polymer layer of fragmented acrylate." The plasma polymerization environment is highly energetic, with many possible fragmented species being formed. Although fragmented acrylate can result in crosslinking of the acrylate polymer thin film on the surface of the substrate, it can also result in species of fragmented acrylate on the substrate (i.e., not acting as a crosslinking agent). Applicant's claim 33 requires the polymer layer of fragmented acrylate set forth in Applicant's paragraph [0022]. The disclosure at Applicant's

paragraph [0022] says nothing about crosslinking. Crosslinking of the deposited film from fragmentation of the carboxylate is discussed for example at paragraph [0024]. The fragmented acrylic acid set forth at paragraph [0012] on page 10 referred to by the Examiner relates to the fragmented monomer necessarily present in the plasma as part of the plasma polymerization process. Thus, the deposited film layer has fragmented acrylate on the substrate, different from a crosslinked unit in the deposited film, in the embodiment set forth in claim 33.

New claim 50 sets forth that the plasma polymerized polymer film layer further includes crosslinked units, such that the plasma polymerized film is a crosslinked acrylate plasma polymerized film. Thus, the fragmented units set forth in claim 33 are different from the crosslinked units of the deposited film on the substrate. Support for new claim 50 can be found at paragraph [0007].

Thus, the fragmented acrylate (which is specifically a fragmented acrylate that results from plasma polymerization of an acrylic acid) is a structure that imparts a distinctive structural characteristic to the final product resulting from the plasma polymerization. In contrast, compatibilizing agents such as the ethylene acrylic acid/acrylic ester copolymers of Davis-Lemessy et al. would not have such fragmented acrylate present. Specifically, Davis-Lemessy et al. discloses that the compatibilizing agent is applied as an extruded collar, or a solution applied for example by spraying, dipping or painting, or added as an integral co-component of a catheter part, none of which would result in a deposited plasma polymerized polymer layer of acrylate and fragmented acrylate formed from an acrylic acid plasma. Rather, such functionalized

ethylene based compounds of Davis-Lemessy et al. bond as adhesives (without the high energy of a plasma polymerization process that produces the covalent bonding between the plasma polymerized film and substrate). The disclosure in Davis-Lemessy of treating the surface of the substrate to provide improved miscibility with the compatibilizing agent (see col. 3, lines 12-29) would not result in a deposited film of the fragmented form of acrylate called for in the embodiment of Applicant's claim 33. Rather, the Argon plasma stream referred to in Davis-Lemessy (see col. 3, line 19) is by definition 100% Argon and thus not an acrylic acid plasma. Cleaning/treating with a 100% Argon plasma stream does not add a new functionality to the surface of a substrate, and adding new functional groups of a primer such as the LOCTITE primers referred to in Davis-Lemessy would not result in the deposited film of the fragmented form of acrylate called for in the embodiments of Applicant's claims 33 and 49.

Moreover, the Examiner failed to address Applicant's argument regarding the limitation in Applicant's claim 36 requiring a layer of an adhesive between the plasma polymerized film and the second layer, so that the adhesive bonds the second layer to the plasma polymerized film on the first surface of the first layer. In contrast, the functionalized ethylene based compounds (i.e., the "compatibilizer") of Davis-Lemessy et al. bond as adhesives, such that there is no teaching or suggestion to include an additional layer of another adhesive between the compatibilizer and the second layer.

Regarding claim 49, the Examiner failed to address Applicant's argument regarding the limitation in Applicant's claim 49 requiring that the plasma polymerized film is an acrylate homopolymer, support for which can be found at paragraphs [0022],

[0023], and [0026] disclosing the film prepared by plasma polymerization of acrylic acid (the acrylic acid monomer providing a homopolymer and not a copolymer). In contrast, the Examiner relies on the ethylene acrylic ester and ethylene acrylic acid copolymer adhesives of Davis-Lemessy. There is no teaching or suggestion in Davis-Lemessy et al. of the acrylate homopolymer required by Applicant's claim 49.

In the aforesaid final Office Action, the Examiner rejected claims 33-36, 38, 39, 41 and 49 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7 and 8 of U.S. Patent No. 6,946,173, and stated in the Response to Arguments section that the double patenting rejection has not been addressed by the Applicants and is maintained. However, the Examiner's attention is directed to Applicant's amendment filed 1/25/07, in which Applicant's stated in part

"The Examiner rejected claims 33-36, 38, 39 and 41 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 and 8 of U.S. Patent No. 6,946,173, stating, in part, that claims 1, 7 and 8 of the '173 patent recite a balloon catheter having a balloon having a first layer of expanded PTFE and the first layer has a plasma polymerized functionality bonded to at least a section thereof. However, contrary to the Examiner's assertion claims 1 and 7 of the '173 patent to do not recite a plasma polymerized functionality bonded to at least a section of the balloon first layer. Only claim 8 recites a plasma polymerized functionality, but claim 8 depends from claim 1, and claim 1 further requires an elastomeric polymeric material which impregnates the porous polymeric material of the first layer and which is compatible with, and different

than, the elastomeric polymeric material of the second layer and that the second layer has a radial tensile set of about 0% to about 10% based on a radial expansion of at least about 300% of an initial diameter, which could not have been claimed in the instant (earlier filed) application. Therefore, Applicants respectfully request that the double patenting rejection be withdrawn.”

The double patenting rejection was not maintained in the subsequent Office Action of 6/1/07. Therefore, Applicant’s request reconsideration of the now repeated double patenting rejection in light of the above remarks.

In light of the above amendments and remarks, applicant respectfully requests reconsideration and that a timely Notice of Allowance be issued in this case.

The commissioner is authorized to charge any deficiencies in fees or credit any overpayments to our Deposit Account No. 06-2425.

Respectfully submitted,
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